



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2005

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2005-01022

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 217862.

The Texas Health and Human Services Commission (the "commission") received a request for the October 2004 settlement between the commission and South Texas Dental and all investigation records associated with this settlement. You state that you have withheld from disclosure the requested investigation records pursuant to a previous determination granted to the commission in Open Records Letter No. 2004-8876 (2004) on October 19, 2004. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). You state that some of the remaining requested information will be released to the requestor. You ask whether the information you have marked is subject to the previous determination. In the alternative, you claim that the marked information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the marked information may be subject to a previous determination of this office issued as Open Records Letter No. 2004-8876 (2004). *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body

which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). In Open Records Letter No. 2004-8876 (2004), this office authorized the commission to withhold information compiled by the Office of Inspector General (the "OIG") in connection with its investigations under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code. In this instance, you state that "[a]lthough the requested settlement agreement was not created for investigative purposes under section 531.1021(g), the text in the agreement we have marked was derived from information contained in confidential OIG records of a Medicaid fraud and abuse investigation." Based on your representation that the marked information is derived from information compiled by the OIG and our review of the submitted information and our records, we conclude that Open Records Letter No. 2004-8876 (2004) functions as a previous determination in this instance; therefore, the commission must comply with that ruling and withhold the marked information. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001). The remaining submitted information must be released to the requestor.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

¹ As we are able to reach this conclusion, we need not address your other arguments.

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 217862

Enc. Submitted documents

c: Mr. Pablo Lastra
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(w/o enclosures)